least yearly compilation. It would seem therefore that the eleven months allowed in the present case is about the limit within which such claims can be created and priority given to them. Debts older than this raise at least the presumption that they rely more upon the general credit of the company for satisfaction than upon the current expenses. When such is the case the principles of *Fosdick* v. *Schall* hardly apply. *Thomas* v. *Peoria R. R.*, 36 Fed. 808. The principles to be drawn from the present decisions of the Supreme Court seem to be briefly these: In order to give preference to the claims of material men over mortgage creditors (1) such claims must be created within some limited time to be settled by the circumstances of each case; (2) they must be against the current earnings of the road, not against its general credit; (3) they must not be secured by collateral security; (4) they must be for such repairs to the road as are required to put it in safe condition, and not so extensive as to amount to practical reconstruction; (5) they must be for a special kind of material and labor. These principles should be kept clearly in mind, for some State courts have gone so far as to say that almost every claim of material men against a railroad must be paid before the mortgagee. Such a decision is undoubtedly wrong, not only being unjust to him who has lent the railroad his money, but also giving a greater security to some creditors than they deserve. The principle of *Fosdick* v. *Schall* is undoubtedly good law within the limits that seemed well established prior to this Carnegie Steel Co. case, and while the change made by this case seems proper and just, a limit has now been reached by this decision which it would seem can not be overstepped with impunity.

ENGAGEMENT TO MARRY, A STATUS—STATUTE OF FRAUDS.

The authorities are united in distinguishing marriage from ordinary civil contracts, declaring it the most prominent of that class of contractual relationships, each of which is termed a status; Schouler Dom. Rel., sec. 13. Nevertheless is not the agreement to enter into this status at a future time in itself simply an executory agreement, the peculiar properties of the marriage relationship not attaching until the executory contract is consummated and the legal status brought into being? There are many authorities to this effect, declaring that an agreement to marry is affected by the various rules and regulations which govern any contract, and if the promise is not to be performed within one year it falls within the fourth section of the Statute of Frauds, requiring such contracts to be in

writing. *Ullman* v. *Meyer*, 10 Fed. 241; *Nichols* v. *Weaver*, 7 Kans. 373. Confusion has arisen, in cases which apparently are at variance with these authorities, by a failure to distinguish between an agreement to marry *at a certain time* and a promise to marry *within such time*. In the latter case the agreement may be performed at any time; hence, it does not fall within the provision of the statute respecting agreements which are not to be performed within a certain time. *Lawrence* v. *Cooke*, 56 Me. 193; *Linscott* v. *McIntire*, 15 Me. 201.

In the recent case of *Lewis* v. *Tapman*, 45 Atl. Rep. 459 (Md.), the court recognizes the above distinctions, but still declares that the agreement to marry, not to be performed within a year, is not affected by the fourth section of the Statute of Frauds. Chief Justice McSherry, writing the opinion of the court, associates the nature of an engagement so intimately with that of marriage that he attributes to the former the peculiarities of a status, such as marriage itself possesses. It is difficult to see how the authorities support this position. The leading cases opposing the necessity of a writing to evidence an agreement to marry not to be performed within a year, are, first, the case of *Brick* v. *Flannigan*, 36 Hun. (N. Y.) 52, which takes such position for the reason that the title to the New York Statute of Frauds clearly indicates that it is to apply only to goods, chattels and things in action; and, second, the case of *Blackman* v. *Mann*, 85 Ill. 222, which announces the more difficult doctrine of a continuing contract, by which it is considered that so long as the parties exchange the various attentions incident to an engagement, so long do they each continually promise the other to consummate the marriage at the specified time. But if these attentions cease, and if the date of marriage is further removed from such time than a year, the statute applies. This is suggested in the same case which announces the rule.

Hence, the case under consideration is clearly a new step in the direction of elevating the importance of an engagement to marry, giving it such attributes of a status that under no circumstances does the fourth section of the Statute of Frauds apply. The court founds its conclusion also on the doctrine that there was no civil action for the breach of a promise to marry when the Statute of Frauds was passed, hence the statute does not apply to such agreements. But in this connection it must be remembered that numerous contractual remedies have been granted since the passage of that statute, which then were denied; and that each has been brought to the test of the statute's provisions. *Derby* v. *Phelps*, 2 N. H. 515.